

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re DYNAMIC RANDOM ACCESS
MEMORY (DRAM) ANTITRUST
LITIGATION

No. M 02-1486 PJH

This Document Relates To:
All INDIRECT PURCHASER ACTIONS

**ORDER DENYING MOTION
FOR PRELIMINARY APPROVAL
OF SETTLEMENT**

State of New York v. Micron et al.
(C 06-6436 PJH)

This Document Also Relates To:

State of California et al. v. Samsung Elec. et al.,
(C 07-1347 PJH)

State of California, et al. v. Winbond Elec. Co.,
(C 07-2589 PJH)

Plaintiffs' motion for preliminary approval of settlement with defendants Samsung and Windbond, came on for hearing before this court on November 14, 2007. Plaintiffs, private indirect purchasers of DRAM and DRAM-containing products, and various individual States and their government entities acting through their Attorneys General (collectively "plaintiffs" or "plaintiff States"), appeared through their respective counsel, Josef D. Cooper, Daniel J. Mogin, David Boies, Francis Scarpulla, Adam C. Belsky, Joseph M. Patane, Kathleen E. Foote, Emilio E. Varanini, and Charles M. Kagay. Defendants, both settling defendants and non-settling defendants, appeared through their counsel, Joel S. Sanders,

1 Harrison J. Frahn, Michael W. Scarborough, James L. McGinnis, Julian Brew, Scott E.
2 Morgan, Matthew D. Thurlow, Howard M. Ullman, Robert B. Pringle, and Michael F.
3 Tubach. Having read all the papers submitted and carefully considered the relevant legal
4 authority, the court hereby DENIES plaintiffs' motion for preliminary approval, for the
5 reasons stated at the hearing, and summarized as follows:

6 The court is not prepared, at this juncture, to certify the two proposed settlement
7 classes set forth by the parties, as there is insufficient information from which to conclude
8 that the requirements of Federal Rule of Civil Procedure ("FRCP") 23(a) and (b) have been
9 satisfied. Moreover, to the extent that the proposed settlement classes appear to include
10 members whose interests conflict, and whose presence may require consideration and/or
11 addition of subclasses, these issues must be resolved before the court can determine that
12 certification of the settlement classes is appropriate.

13 In view of these concerns, the court is also unprepared to grant preliminary approval
14 of the Samsung and Winbond settlements. While plaintiffs have provided some necessary
15 information regarding the settlement agreements executed by the parties (e.g., settlement
16 amounts and summary of relevant provisions), without further clarification as to the need
17 for any subclasses, or a proposed form of class notice or plan of allocation that would
18 distribute the settlement funds among potential class members, there is simply no
19 adequate basis upon which the court can independently and adequately determine the
20 fairness of the settlements vis-a-vis class members. The court thus declines the parties'
21 request to grant preliminary approval on the record established and to defer approval of the
22 plan of allocation and form and content of class notice until some later unspecified date.

23 Accordingly, plaintiffs' motion for preliminary approval of settlement is DENIED. The
24 denial is without prejudice, however, to plaintiffs' ability to re-file their motion once the
25 above issues have been resolved. Although the court disagrees with the parties about the
26 timing of a special master referral, the court does agree that referral to a special master
27 would assist the parties in developing a plan of allocation and a plan for distribution of class
28

1 notice and assist the court in its evaluation of the fairness of the proposed settlements.
2 Accordingly, the settling parties shall submit a stipulation and proposed order referring the
3 two proposed settlements to a mutually agreeable special master to prepare a report and
4 recommendation on these subjects. The stipulation and order shall clearly set forth the
5 scope of the special master's anticipated duties and shall be submitted no later than
6 November 28, 2007.

7 **IT IS SO ORDERED.**

8 Dated: November 15, 2007



9
10

PHYLLIS J. HAMILTON
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28